DEPARTMENT OF STATE REVENUE

02-20130349.LOF

Letter of Findings Number: 02-20130349
Corporate Income Tax
For Tax Years 2009-10

NOTICE: IC § 6-8.1-3-3.5 and IC § 4-22-7-7 require the publication of this document in the Indiana Register. This document provides the general public with information about the Department's official position concerning a specific set of facts and issues. This document is effective as of its date of publication and remains in effect until the date it is superseded or deleted by the publication of another document in the Indiana Register.

ISSUE

I. Corporate Income Tax–Calculation.

Authority: IC § 6-3-1-3.5; IC § 6-8.1-5-1; I.R.C. § 179C; Indiana Dep't of Revenue 2010 IT-20 Booklet.

Taxpayer protests the denial of a claimed subtraction from Indiana adjusted gross income.

STATEMENT OF FACTS

Taxpayer is an out-of-state business with operations in Indiana and other states. As the result of a review of Taxpayer's 2010 and 2011 Indiana adjusted gross income tax ("AGIT") returns, the Indiana Department of Revenue ("Department") determined that Taxpayer had claimed an adjustment for which it was not eligible and made adjustments to the 2010 and 2011 returns regarding refinery property placed in service in 2009. The result of these adjustments was that the Department issued a proposed assessment for Indiana AGIT for 2011. Taxpayer protested the proposed assessment and the adjustments, claiming that the returns were correct as filed. An administrative hearing was conducted and this Letter of Findings results. Further facts will be supplied as required.

I. Corporate Income Tax–Calculation.

DISCUSSION

Taxpayer protests the Department's adjustments to Taxpayer's 2010 and 2011 IT-20 Indiana AGIT returns. Taxpayer also protests the resulting proposed assessment of Indiana AGIT for 2011. The Department based its determination that the returns were incorrect as filed on the grounds that Taxpayer had made a 2010 subtraction under Indiana IT-20 reason code "111" for which it was eligible at the federal level but for which it was not eligible at the state level. The Department's disallowance of that 2010 subtraction resulted in a reduced 2010 overpayment for Taxpayer to apply to its 2011 Indiana AGIT. That in turn resulted in a corresponding Indiana AGIT assessment for 2011. Taxpayer protests that the Indiana Code does provide such subtraction and that the subtraction was properly claimed even if the reason code number it used on the return was not correct. The Department notes that the burden of proving a proposed assessment wrong rests with the person against whom the proposed assessment is made, as provided by IC § 6-8.1-5-1(c).

The relevant statute is IC § 6-3-1-3.5, which states in relevant part(s):

> When used in this article, the term "adjusted gross income" shall mean the following:
> . . .
> (b) In the case of corporations, the same as "taxable income" (as defined in Section 63 of the Internal Revenue Code) adjusted as follows:
> . . .
> (14) Add or subtract the amount necessary to make the adjusted gross income of any taxpayer that made an election under Section 179C of the Internal Revenue Code to expense costs for qualified refinery property equal to the amount of adjusted gross income that would have been computed had an election for federal income tax purposes not been made for the year.
> . . . .
> (Emphasis added).

The Department reviewed Taxpayer's 2010 and 2011 AGIT returns and determined that Taxpayer had incorrectly entered the amount it was claiming as a subtraction under code "111." The Department considered that the

reason code listed by Taxpayer on the returns was "111" but that code "111" was actually an addback of a claimed federal deduction which had not been adopted by Indiana and could not be used to reduce income. This determination resulted in Taxpayer's 2010 Indiana AGIT being adjusted to reflect no reduction to income.

Taxpayer argues that IC § 6-3-1-3.5(b)(14) provides for a valid adjustment and that there were no instructions with the Indiana AGIT return to explain how to list such an adjustment on the Indiana return. Specifically, Taxpayer states that the claimed adjustment on the 2010 return represents the addback of the claimed federal deduction and the normal depreciation for the property in question. Taxpayer states that it entered the adjustment as logically as it could without instructions, but that even if code 111 was not the proper code number, the adjustment is still valid under IC § 6-3-1-3.5(b)(14).

A review of the Department's 2010 IT-20 Booklet, which contained instructions regarding how to fill in and complete form IT-20, shows that the Booklet stated on page eighteen:

> Qualified Refinery Property (3-digit code: 111)
>
> Add back the deduction for qualified refinery property. Enter an amount equal to the amount claimed as a deduction for expense costs for qualified refinery property under Section 179C of the IRC for federal income tax purposes.
> (Emphasis added).

I.R.C. § 179C provides in relevant part:

> (a) Treatment as expenses
> A taxpayer may elect to treat 50 percent of the cost of any qualified refinery property as an expense which is not chargeable to capital account. Any cost so treated shall be allowed as a deduction for the taxable year in which the qualified refinery property is placed in service.
> (b) Election
> (1) In general
> An election under this section for any taxable year shall be made on the taxpayer's return of the tax imposed by this chapter for the taxable year. Such election shall be made in such manner as the Secretary may by regulations prescribe.
> (2) Election irrevocable
> Any election made under this section may not be revoked except with the consent of the Secretary.
> . . . .
> (Emphasis added).

Therefore, IC § 6-3-1-3.5(b)(14) allows the add back or subtraction of the amount a taxpayer elects under I.R.C. § 179C to "expense" up to fifty percent of the cost of certain refinery property as a regular business cost rather than to normally depreciate one hundred percent of such a cost as a capital account. While Taxpayer is correct that IC § 6-3-1-3.5(b)(14) says "add or subtract," amounts deducted as expenses on its federal return, Taxpayer is incorrect that IC § 6-3-1-3.5(b)(14) allows it to continue to depreciate remaining amounts for subsequent years. IC § 6-3-1-3.5(b)(14) plainly limits the amount added back or subtracted from a taxpayer's Indiana AGIT to the amounts "expensed" under I.R.C. § 179C. I.R.C. § 179C in turn limits the amount a taxpayer may "expense" up to a maximum of fifty percent of the cost of qualifying refinery property and that amount is further only eligible to be claimed in the same year in which the property is placed in service.

Since I.R.C. § 179C limits the amount a taxpayer may expense and also limits such a treatment to the same year in which the qualifying property is placed in service, IC § 6-3-1-3.5(b)(14) is similarly limited in application. Since Taxpayer placed the qualifying property in service in 2009, and since the subtraction disallowed by the Department was found on Taxpayer's 2010 return and since the amount in question was depreciation of property and not the expensing allowed under I.R.C. § 179C, IC § 6-3-1-3.5(b)(14) does not apply to Taxpayer for 2010. Therefore, the Department's adjustments to Taxpayer's 2010 and 2011 IT-20s and the related proposed assessment of additional Indiana AGIT for 2011 were correct. Taxpayer has not met the burden imposed under IC § 6-8.1-5-1(c).

FINDING

Taxpayer's protest is denied.

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